

(1996) 09 CAL CK 0039
In the Calcutta High Court
Case No : Criminal Revision No. 1227 of 1995

Pradipta Basu Roy Chowdhury

APPELLANT

Vs

Smt. Babita Basu Roy Chowdhury and Others

RESPONDENT

Date of Decision : 19-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178, 181(4)
Penal Code, 1860 (IPC) — Section 403, 405, 406

Citation : (1997) 1 CALLT 331 : (1997) 2 DMC 15

Hon'ble Judges : Asish Baran Mukherjee, J

Bench : Single Bench

Advocate : Milon Mukherjee, for the Appellant; A.P. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Asish Baran Mukherjee, J.—The revisional application arises out of G.R. Case No. 164 of 1995 pending before the Sub-Divisional Judicial Magistrate, Barrackpore under Sections 403/406, IPC.

2. In course of the revisional application u/s 482, Cr. P.C. the petitioner has alleged that he married O.P. No. 1 on 7.8.1993 under the Special Marriage Act and the social marriage was held on 18.1.1994. After the marriage they started to reside in the residence of the petitioner situated at P.S. Thakurpukur, District 24-Parganas (South). On 11.2.1994 the petitioner and his wife left for U.S.A. On 7.8.1994 the O.P. No. 1 returned from U.S.A. alone and started to live at her father's place. On 10.10.1994 the O.P. No. 1 filed a petition of complaint u/s 498A, IPC and filed the same before the learned C.J.M., Barasat and accordingly, Noapara P.S. Case No. 157 of 1994 dated 19.10.1994 was started. The same is pending.

3. On 27.1.1995 the O.P. No. 1 filed another application for alleged offences under Sections 403/406, IPC against the petitioner and his parents. The same was submitted before the C.J.M., Barasat giving rise to Noapara P.S. Case No. 16

dated 27.1.1995.

4. The allegation contained in the latter case that at the time of marriage the parents of O.P. No. 1 gave sufficient articles to the couple as gifts and those articles were entrusted to the petitioner and his father. It is also alleged that on the day of Phool Sajja, the petitioner was subjected to be intoxicated and allegedly ill-treated the O.P. No. 1. There is also the allegation of a demand made by the petitioner and the others of a sum of Rs. 60,000/- being the passage money to U.S.A. The further allegation is that while staying there she was also ill-treated and due to the ill-treatment she had to undergo an abortion at Chicago and ultimately she returned from her maternal uncle's house from where she took shelter temporarily.

5. The learned S.D.J.M. after taking cognizance issued processes against the petitioner and his parents.

6. Being aggrieved the present revisional application has been filed by the petitioner alone alleging that the alleged incident, if any, took place beyond the jurisdiction of the S.D.J.M., Barrackpore. Entrustment of articles, if any, was done at Tollygunge which falls within the jurisdiction of District 24-Paraganas(S). It is alleged that as per the averment of the FIR on 11.2.1994 while leaving for U.S.A. O.P. No. 1 left all her articles in the custody of parents of the petitioner. There is also averment that the key of the lockers of the Bank were already handed over to the O.P. No. 1. As per the statement in writing of the Manager of the Bank the locker was operated by petitioner and O.P. No. 1 jointly on 5.1.1994 and subsequently by O.P. No. 1 alone on 22.1.1994. It is alleged that the O.P. No. 1 took away all her properties and instituted the case falsely against the petitioner in whose favour there was no entrustment.

7. The revisional application is being resisted by the O.P- No. 1 alone.

8. I have heard the submissions made by the learned Advocates representing the petitioner and also the O.P. No. 1. The learned Advocate for the petitioner relies on Paras VI and IX of the FIR in order to assert that there was no entrustment in favour of the petitioner. From averment of Para VI, we got that prior to the O.P. No. 1 leaving for U.S.A. in the company of her husband on 11.2.1994, she left all her Stridhan properties as mentioned in Annexure "A" to the petition including silver utensils received as presentation in the custody of O.P. Nos. 1 and 2, that is the father-in-law and mother-in-law. As per para IX of the FIR father of the O.P. No. 1 after her return from U.S.A. contacted the O.P. Nos. 1 and 2, father-in-law and mother-in-law on several occasions with a request to return the Stridhan properties kept in their custody and on 22.1.1995 she personally went to her in-laws with her father and brother-in-law and demanded the same but they declined to return those materials. From the above, it is argued for the petitioner that at no point of time, there was any entrustment in favour of present petitioner, namely, the husband of O.P. No. 1.

9. On the other hand, the learned Advocate appearing for the O.P. No. 1 has

drawn my attention to para 11 of FIR which says that after the social marriage, she was taken to her matrimonial house on the next day and all her personal belongings which are her Stridhan properties were entrusted to the accused and those were carried by the accused Nos. 1 and 3, namely, husband and the father-in-law to their house at Tollygunge. It is argued that there was joint entrustment in favour of the present petitioner and his father. Being questioned the learned Advocate for the O.P. No. 1 submitted that Para VI of the FIR is a surplusage.

10. I have given my careful consideration to the submissions of both the sides. The submission advanced on behalf of O.P. No. 1 regarding para VI of the FIR being a surplusage cannot be accepted for the simple reason of the existence of Para IX of the FIR and further questioned the learned Advocate submitted that the offence in question should be treated as one u/s 405 IPC punishable u/s 406, IPC and not Section 403, IPC.

11. In order that an offence u/s 405, IPC is committed two elements are essential, namely, entrustment with property or dominion over any property and dishonest misappropriation or conversion to his own use or dishonest disposal of such property. Therefore, if para 11 of the FIR is to be accepted as sacrosanct and discard, para VI of the same being a surplusage then the complaint nowhere speaks of any dishonest conversion or use of the property by the present petitioner or any demand for such properties by the O.P. No. 1 to the petitioner. On the other hand scrutiny of Para VI of the FIR makes it clear that up to that point of time, 11.2.1994 the O.P. No. 1 had complete dominion over her Stridhan properties and it is when she left for U.S.A. that she entrusted the petitioner's father-in-law and mother-in-law with the said properties. This also fits with Para IX of the FIR since she is alleged to have repeatedly contacted the in-laws after her return from U.S.A. and she actually went to their place in the company of her father and brother-in-law demanding return of the articles so entrusted. Therefore, the irresistible conclusion will be that in the event of there being any entrustment the same was entrusted with the two in-laws and not with the petitioner. Therefore, the present petitioner cannot be said to have prima facie committed an offence either u/s 403 or u/s 406 of the IPC when the FIR in question does not make out a prima facie case, the continuance of such proceeding is an abuse of process of the Court.

12. There has been considerable argument over the venue of the trial. While the learned Advocate representing the O.P. No. 1 relied on Section 178, Cr. P.C. with full force in support of his contention that the S.D.J.M., Barrackpore has got territorial jurisdiction over the place where the alleged offence was committed, it was argued for the petitioner that Section 178, Cr. P.C. can have no application to the present case in view of the specific provision of Section 181(4), Cr. P.C. I have given my careful consideration to the submissions made by both the sides and I cannot accept the submissions made by the learned Advocate for the O.P. No. 1, since Section 178(b) Cr. P.C. can have no application in the present case not only because there is specific provision of the Section 181(4), IPC but also

because of non-existence of facts and circumstances which brings an offence under the purview of Section 178 (b), Cr. P.C. It says that when an offence is committed partly in one local area and partly in another and when it is uncertain which of the several local areas the offence is committed, it may be enquired into or tried by a Court having jurisdiction over any of such local areas. In the present case, offence u/s 405 IPC is committed only when there is not only entrustment but also dishonest conversion or disposal of such property. Therefore, the argument advanced on behalf of O.P. No. 1 regarding application of Section 178(b), Cr. P.C. is not correct. The learned Advocate wanted to show that the learned S.D.J.M., Barrackpore who has jurisdiction over P.S. Noapara is competent to take cognizance of the offence since one of the ingredients of the offence, namely, entrustment took place there on the night of social marriage. But as I have said Section 178(b), Cr. P.C. does not envisage a position in which one ingredient of the offence is committed at one place and another is committed in another place but it speaks of cases when an offence is committed partly in one area and partly in another area, that the Courts having jurisdiction in both the areas have got territorial jurisdiction to take cognizance of the said offence. In the present case, when the charge is u/s 405 IPC, offence is completed only when the second ingredient of Section 405, IPC is completed and not before that. Mere entrustment does not make an offence, besides, Section 181(4), Cr. P.C. is the specific provision dealing with offences under Sections 403 and 405.

13. In the result, I come to the conclusion that so far as the present petitioner is concerned, the prosecution under Sections 403/406 IPC cannot stand. Accordingly, the revisional application stands allowed on contest and the case pending before the Trial Court, so far as it relates to the present petitioner stands quashed.

14. Let the lower Court record be sent back as expeditiously as possible.